



## POLICE DEPARTMENT

January 8, 2013

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Kenneth Kissiedu  
Tax Registry No. 911982  
41 Precinct  
Disciplinary Case No. 2010-1203

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The above-named member of the Department appeared before me on September 10, 2012, charged with the following:

1. Said Sergeant Kenneth Kissiedu, while off-duty and assigned to the 41st Precinct, on or about February 3, 2010, after having been ordered to stop by two (2) members of the Yonkers Police Department, did fail and neglect to stop.

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS  
GENERAL REGULATIONS

2. Said Sergeant Kenneth Kissiedu, while off-duty and assigned to the 41st Precinct, on or about February 3, 2010, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Sergeant was discourteous to two (2) members of the Yonkers Police Department in that said Sergeant did fail to cooperate with, and was rude to, said members of the Yonkers Police Department while they were conducting an investigation. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED  
CONDUCT GENERAL REGULATIONS

P.G. 203-09, Page 1, Paragraph 2 PUBLIC CONTACT GENERAL  
GENERAL REGULATIONS

3. Said Sergeant Kenneth Kissiedu, while off-duty and assigned to the 41st Precinct, on or about February 3, 2010, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Sergeant did prevent members of the Yonkers Police Department from performing their duties in that Sergeant Kissiedu had to be forcibly stopped.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT ■ PROHIBITED  
CONDUCT GENERAL REGULATIONS

NYS Penal Law Section 195.05 OBSTRUCTING GOVERNMENTAL  
ADMINISTRATION

The Department was represented by Pamela Naples, Esq., Department Advocate's Office, and Respondent was represented by Richard Murray, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

#### DECISION

Respondent is found Not Guilty of Specification Nos. 1 and 2. The Department Dismissed Specification No. 3.

#### SUMMARY OF EVIDENCE PRESENTED

##### Introduction

It is not disputed that on February 3, 2010 at about 2200 hours, Person A, a resident of Yonkers, New York (Yonkers), entered the ATM area of the Citibank branch located on Main Street, Yonkers, and withdrew cash. A male panhandler began harassing her by demanding that she give him money. As Person A hastily left the ATM area, she accidentally dropped her cell phone and did not stop to pick it up. When Person A arrived back at her apartment building, she reported the incident to a security guard who telephoned the Yonkers Police Department (YPD) and relayed that Person A had described

the panhandler as a dark-skinned male Hispanic who was wearing a purple jacket and a dark hood. In response to this call, YPD Police Officers Thomas Cleary and Jared Singer, who were on-duty and in uniform, drove their marked radio motor patrol car (RMP) to Main Street, Yonkers.

It is further undisputed that on February 3, 2010, Respondent resided in Yonkers and that he was scheduled to report for his tour of duty at the 41 Precinct at 11:05 p.m. At about 10:00 p.m., Respondent left his residence, drove to Main Street, Yonkers, parked there and entered the ATM area of a Chase Bank branch which is located across the street from the Citibank branch. After Respondent withdrew cash from his Chase account, he left the ATM area and stepped into the street. Because it was a cold, windy, night, Respondent was wearing a ski jacket over a hooded sweatshirt and he had pulled the hood over his head.

As Respondent was walking back to his car, Cleary and Singer arrived on Main Street and saw Respondent. They engaged in an interaction with Respondent on the street and arrested him on a charge of Obstructing Governmental Administration in the Second Degree.

YPD Police Officers Campanile and Wanderman arrived at the scene to assist Cleary and Singer. Singer informed them that Respondent was in custody and that he had requested to be taken to a hospital for medical treatment. Campanile transported Respondent to St. Joseph Hospital, Yonkers, where he was treated by a physician for face pain and then released [Department's Exhibit (DX) 3]. Campanile then transported Respondent to YPD Central Booking where he was issued a Desk Appearance Ticket. Respondent was suspended from duty.

Respondent requested a trial by jury. In September, 2011, a jury trial was held in the Criminal Part, City Court of Yonkers. Cleary and Singer both testified against Respondent at this trial. At the conclusion of the trial, the jury returned a verdict of Not Guilty.

#### The Department's Case

The Department called Lieutenant William Burnicke as its sole witness.<sup>1</sup>

#### Lieutenant William Burnicke

Lieutenant Burnicke, assigned to the Bronx Investigations Unit, testified that he was assigned to investigate the circumstances surrounding Respondent's arrest by YPD for Obstructing Governmental Administration. On the night of this incident, he responded to St. Joseph Hospital, Yonkers, after he learned that Respondent had been arrested and was being treated there by a physician for facial bruising. He did not interview Respondent that night.

Burnicke obtained a YPD Crime Investigation Report which was signed by Cleary but not Singer (DX 2) regarding the arrest of Respondent. In this report Cleary wrote that he and Singer "responded to the vicinity of 92 Main Street on a report of a suspicious male who was possibly involved in a larceny." Radio dispatch advised them that a female observed the suspect pick up her purse and head towards the Chase Bank at the corner of Main Street and Buena Vista Avenue. "The female described the suspect as a dark skin male Hispanic, wearing a purple jacket and a dark hat." Cleary wrote that he

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<sup>1</sup> The Assistant Department Advocate (the Advocate) stated that the Department sent a subpoena to YPD requesting that Cleary and Singer appear to testify at this trial but that the Department of Law of the City of Yonkers informed the Department they would not be appearing in the Trial Room to testify.



and Singer arrived at the location and observed Respondent walk from the vicinity of Chase Bank and turn south onto Buena Vista Avenue. Respondent was wearing a purple jacket, black hat, black hooded sweatshirt pulled over his head and was carrying a small black bag in his left hand. While in the RMP, "the assigned ordered" Respondent "to stop," but Respondent replied, "My fucking name ain't yo." Cleary drove next to Respondent, exited the RMP, ordered Respondent to stop again, but Respondent refused.

Cleary wrote that when he approached Respondent, he noticed a "distinct" bulge in Respondent's rear waistband on the small of his back, on the right side. Cleary then walked toward Respondent and placed his left hand on Respondent's shoulder and again ordered Respondent to stop. Respondent began to curse at Cleary and continued to prevent Cleary from stopping and questioning him.

Respondent "became physical and aggressive towards" Cleary; that he "pushed" Cleary's "hand back in an effort to leave the area;" that he "physically attempted to push past" Cleary; that he "continued to physically prevent" Cleary "from stopping and questioning" him; and that "in a quick aggressive manner with his right hand reached towards the area of his waistband where" Cleary "had previously observed a distinct bulge." Cleary also wrote that "in fear for officer safety," he "struck" Respondent "in the head in an effort to keep" Respondent "from reaching for any possible weapons from his waistband." Cleary then "took" Respondent "to the ground and placed him in handcuffs."

The parties stipulated the admission into evidence of the transcript of Singer's and Cleary's testimony at the criminal trial (DX 1):

Singer's testimony at the criminal trial

Singer testified that on February 3, 2010, at around 10:30 p.m. he and Cleary received a radio communication to respond to the vicinity of Main Street and Buena Vista Avenue regarding a suspicious male who had taken a woman's purse. The male was described as a dark skin Hispanic, wearing a purple jacket and a hat. He recalled that the weather was cold and windy but did not recall if it was clear or not. Singer and Cleary arrived at 92 Main Street and observed a male, later identified as Respondent, wearing a purple jacket with a hood over his head, carrying a black bag and walking around the corner from Chase Bank southbound on Buena Vista Avenue. Singer turned in the same direction as Respondent and said, "Yo, stop." Respondent did not stop and replied, "My fucking name ain't yo." Singer then got out of his RMP, approached Respondent on the sidewalk and told him to stop.

Singer asked Respondent "If he saw any incident that occurred in this area within the past couple of minutes." Respondent replied, "I didn't see shit." Singer said he did not turn on his sirens nor use his spotlight, but he did have his headlights on. He said there were several yellow street lights in the area. Singer said that he approached Respondent from behind and Cleary approached Respondent from the front. Singer said Cleary spoke to Respondent while he tried to call YPD Headquarters. Singer wanted Headquarters to locate Person A and ascertain if she was available for a show-up to see if she could identify Respondent.

Singer testified that he did not recall if he had asked Respondent for identification, but that Respondent did not identify himself. He said Respondent was

evasive, belligerent and was cursing, "I didn't see shit. I didn't do shit. You can't talk to me like this." Singer opined that Respondent "just didn't want anything to do with us."

Singer was not able to get through to YPD Headquarters because the battery on his portable radio was dead. Singer was about to use the radio in the RMP to call YPD Headquarters, but as he walked toward the RMP, he heard Cleary say, "Let me see your hands." Singer turned around and observed Cleary strike Respondent once in the head, take Respondent down to the ground and place him in handcuffs. Respondent then said, "Look in my right pocket." From Respondent's right pocket, Cleary recovered Respondent's Department Identification. Cleary also recovered Respondent's firearm from his right side.

Two supervisors, Sergeant Castelli and Lieutenant Spergel, and two other police officers, Wanderman and Campanile, came to the scene. Singer did not notice any visible injuries on Respondent who was transported to St. Joseph's Hospital.

During cross-examination, Singer acknowledged that although when he first spotted Respondent he appeared to be wearing a purple jacket, he later realized that the jacket was blue. Singer agreed that he was testifying purely from memory because he did not document this incident. Singer acknowledged that he did not notice any bulge on Respondent's back and that Cleary recovered Respondent's firearm from the right side of Respondent's hip. Singer heard Cleary tell Respondent that he had been stopped because he fit the description of a suspect. Singer did not hear Respondent respond to Cleary's questions before Cleary struck Respondent in the jaw area. Singer agreed that Respondent did not raise his hands or struggle with Cleary while Respondent was on the

ground. Singer agreed that neither he nor Cleary had called out “police” when they called out loudly to Respondent to “stop” several times.

#### Cleary’s testimony at the criminal trial

Cleary testified that around 10:30 p.m. he and Singer received a communication from the radio dispatcher indicating that there was a larceny in the area of 92 Main Street. The radio dispatcher further said that a woman had dropped her purse and an unidentified male had picked up it and walked towards the Chase Bank. The radio dispatcher described the suspect as a dark skin male wearing a purple jacket and a black hat.

Cleary and Singer arrived at the location within about four minutes and observed Respondent in front of the Chase Bank walking southbound onto Buena Vista Avenue. Respondent was less than 50 feet away when Cleary observed him. Respondent was wearing a purple jacket and a hooded sweatshirt that covered his face and he was carrying a small bag in his left hand. Cleary testified that he pulled up next to Respondent, rolled down the window and said, “Come here for a second, we got to talk to you,” and that Singer said, “Yo.” Cleary and Singer yelled because they wanted to get Respondent’s attention. Respondent turned his head “quickly” towards them and then continued walking.

Cleary and Singer exited the RMP and Cleary approached Respondent from the front while Singer approached him from behind. He recalled that the lighting was poor and the only light emanated from the headlights of the RMP and street lights. Cleary was a couple of feet away from Respondent when he approached him on the sidewalk. When



Cleary was able to fully observe Respondent, he noticed that Respondent had on a black knitted hat.

Cleary testified that Singer interviewed Respondent but he did not recall what was said during the interview. Singer then walked to the RMP to use the radio while Cleary spoke to Respondent. Cleary asked Respondent "where he was coming from and if he had ID on him." Respondent replied, "I didn't see shit," did not present his identification, and tried to push past Cleary. Cleary said he noticed a bulge protruding from Respondent's right hip area.

Cleary described Respondent's demeanor as agitated "because of the tone of his voice, you know, the fact that he cursed at us trying to push past me." Cleary said Respondent "put his hand on my shoulder to try and create enough room so he could just leave the area without speaking to us." Cleary placed his hand on Respondent's right shoulder and told him that he was stopped because he "fit the description of one of the parties involved." Respondent replied "I didn't see shit" and tried to push past Cleary on two occasions.

The third time Respondent tried to push past Cleary, Cleary placed his hand (did not indicate which hand) on Respondent's shoulder and Respondent reached towards Respondent's right hip area with his right hand. Cleary agreed that he was concerned for his safety and grabbed Respondent's right arm with Cleary's left hand. Cleary then "struck [Respondent] in the head once and I took his right arm, put it behind his back and I put a handcuff on his right arm and then as soon as I asked him to give me his other arm he gave me his left arm to be handcuffed." Cleary did not know what Singer was doing when he took down Respondent.

Cleary denied that he hit Respondent after Respondent was on the ground. Cleary brought Respondent up on his feet and Respondent asked Cleary to look in his right pocket. Cleary recovered a New York City Police Department shield, identification card and a firearm from his right hip area.

Cleary placed Respondent under arrest for obstructing his larceny investigation. Cleary explained that "To further the investigation, I wanted to get his information, see if he was involved, if he wasn't involved, if he had seen anything, but because he tried to leave the area, I couldn't let him leave if he was a possible suspect..." He continued, "because if he was a suspect and I let him leave without getting any of his information, then I let a guy go for larceny. And because of his actions I had - - I was forced to arrest him at the time." Cleary did not notice any visible injuries on Respondent after Respondent had been placed in handcuffs.

Singer requested a supervisor to the scene and Cleary read Respondent his Miranda rights from a Miranda card. However, Cleary did not finish reading the Miranda rights as Respondent interrupted "yeah, yeah, I know my rights." By the time Castelli and Spergel arrived to the scene, Respondent was already in the back seat of the RMP. Wanderman and Campanile also had arrived and Respondent was then taken to St. Joseph's Hospital.

During cross-examination, Cleary stated that he took a report regarding this incident but did not document the suspect's description in his Activity Log. Cleary also did not document Respondent's arrest or the larceny in his Activity Log.

Cleary testified that when he first observed Respondent in front of the bank, he did not turn his lights or sirens on. Cleary agreed that he did not scream from the RMP in

order to get Respondent's attention and that he and Singer did not verbally identify themselves as police officers. Cleary did not recall what Singer asked Respondent while they were on the sidewalk nor did he recall Respondent's answer.

Cleary stated that he noticed a bulge on Respondent "sometime from when I was approaching to when I stopped and I was in front of him." Cleary agreed that after noticing the bulge, he did not hold his firearm and did not give an indication to Singer about the bulge.

Cleary did not recall if the description he received from his radio dispatcher included a man wearing a hood over his head. He agreed that Respondent's jacket appeared purple during the interaction. Cleary stated that the third time Respondent tried to walk past him, he held Respondent's right arm and then punched him somewhere in the head area. Cleary agreed that Respondent did not fight back or struggle.

Cleary acknowledged that although he wrote that he had read Respondent his Miranda rights in a report he generated as a result of this arrest, he actually only partially read Respondent his Miranda rights. Cleary read the Miranda rights before additional police officers arrived. He denied that he had struck Respondent while Respondent was on the ground.

#### Respondent's Case

Respondent testified on his own behalf.

Respondent

Respondent, an 18-year member of the Department who was appointed to the Department on February 28, 1994, testified that he was residing in Yonkers, New York on February 3, 2010 and was scheduled to work from 11:05 p.m. to 8:05 a.m. at the 41 Precinct.

Respondent testified that he left his apartment at around 10:15 p.m., stopped by Chase Bank and then walked towards his vehicle. He said the bank is about a three-minute walk from his residence and his car was about a five-minute walk from the bank. Respondent exited the bank and did not observe anyone else on the street. He walked south on Buena Vista Avenue and "heard a male voice scream out yo a few times, three, four times." Respondent continued to walk, heard "yo" again and then heard a car door open and close on his left side. He looked over his left shoulder and saw a marked RMP.

Respondent testified that it was cold, dark and breezy and he was wearing boots jeans, a hooded sweatshirt and a ski jacket. He had the hood of the sweatshirt over his head and his peripheral vision was obstructed. Respondent stated he first noticed the RMP when he stopped and turned to see who was coming out of the vehicle that had stopped behind him. Respondent said that Cleary and Singer exit the RMP and Cleary, while standing on the road and "agitated" said, "You didn't hear me calling you?" Respondent replied, "Yo isn't my name." Cleary then told Respondent that "[Respondent] fit the description did [Respondent] see a male Hispanic run by with a lady's pocketbook bag?" Respondent told him that he did not see anything.

Respondent explained that Cleary approached him from the front and when Cleary was in front of him, Cleary pointed his finger at Respondent and said "something



to the effect of 'next time you hear us calling you,' and then he just grabbed me by the jacket, pulled me towards and simultaneously punched me in the face." Respondent fell to the ground, Cleary got on top of Respondent and punched him four or five more times. Respondent covered his face with his right hand and Cleary grabbed it. Respondent then offered his left hand, was placed in handcuffs, and was picked up from the ground by Singer and Cleary. Respondent then indicated that his Department identification was in his front right pocket. Respondent stated that while Cleary exchanged words with him, Singer was standing next to Cleary.

Cleary called his supervisor on his cell phone. Cleary asked Respondent if he was armed, Respondent told him he had his firearm in the small of his back and he bent over so that Cleary could remove it. After Respondent was placed in the back of the RMP, a sergeant and a lieutenant arrived. Respondent told them that he had a bruised jaw, he was taken to St. Joseph's Hospital, and after he was treated, he was taken to YPD Central Booking.

At the hospital, Respondent called the 41 Precinct and informed Sergeant Padialla that he was in the hospital because he "got beat up." Respondent stated that he did not know he was under arrest until after he was treated and released. That is why he did not tell Padialla that he had been arrested. At YPD Central Booking, Respondent called Padialla again and informed him that he had in fact been arrested. Respondent denied that he had cursed at Cleary or Singer and also denied that he tried to brush past Cleary. Respondent recalled that he was prescribed painkillers as a result of a bruised jaw.

Respondent demonstrated that he had his firearm, a Glock 19, in the small of his back, slightly to the right. He put on a dark grey or black sweatshirt that was worn the

night of the incident. Respondent also put on his ski jacket to show that his firearm was not visible when Respondent had the sweatshirt and jacket on.

On cross-examination, Respondent agreed that during his 18 years with the Department he had stopped and questioned people as part of his duties and that these stops were based on suspicious behavior. Respondent further agreed that he received descriptions from the radio dispatcher and would stop suspects matching that description. Respondent also agreed that not all the suspects he stopped were the actual persons being sought. Respondent agreed that he asked Cleary, "Is that how you address people?" and that Cleary said that he fit the description of an individual that Cleary was looking for. Respondent explained that, during his official Department interview, when he denied that he had been grabbed by Cleary, he was referring "to them initially grabbing me to stop, not them grabbing me to punch me."

Respondent initially denied that he had asked Cleary, "What are you talking about?" But after reviewing a transcript of his official Department interview, he agreed that he had made that statement. Respondent stated that he filed a civil suit notice of claim against YPD soon after this incident.

### FINDINGS AND ANALYSIS

#### Specification No. 3

The Department moved to Dismiss Specification No. 3. The Advocate stated that the Department could not prove that Respondent engaged in conduct prejudicial to the good order, efficiency or discipline of the Department by preventing YPD Police Officers

Cleary and Singer from performing their duties in that they had to forcibly stop Respondent.

As a result, Specification No. 3 is Dismissed.

Specification Nos. 1 and 2

It is charged that Respondent was ordered to stop by Cleary and Singer but that he failed to stop; and that he engaged in conduct prejudicial to the good order, efficiency or discipline of the Department by being discourteous to Cleary and Singer in that he failed to cooperate with them and was rude to them while they were conducting an investigation.

Since Cleary and Singer did not appear to testify at this trial, the Department attempted to meet its burden of proof by offering into evidence the YPD Crime Investigation Report signed by Cleary (DX 2); and the transcript of Singer's and Cleary's testimony at Respondent's criminal trial (DX 1), both of which were admitted as hearsay evidence at this trial.

As a result of Cleary's and Singer's failure to appear to testify at this trial, Respondent's counsel did not have the opportunity to cross-examine them not only about their claims regarding Respondent's actions but also about their own actions. This is significant here because the record shows that Cleary had a reason to invent or embellish the facts he detailed in the post-arrest YPD Crime Investigation Report he prepared and the facts he described in his subsequent criminal trial testimony.

The YPD Supplementary Report prepared by Officer Campanile (DX 3) establishes that Cleary knew that Respondent was alleging that Cleary's admitted action

of striking Respondent in the head had caused him to suffer an injury, because he had requested to be taken directly from the scene of the arrest to a hospital for medical treatment. Cleary was also aware, before Cleary prepared the post-arrest YPD Crime Investigation Report, that Campanile had transported Respondent to a hospital where he was treated by a physician for face pain (DX 3).

In his YPD Crime Investigation Report, Cleary wrote not only that Respondent had cursed at him and refused to stop even after Cleary got out of his RMP and ordered him to stop, Cleary also wrote that Respondent “became physical and aggressive towards” Cleary; that he “pushed” Cleary’s “hand back in an effort to leave the area;” that he “physically attempted to push past” Cleary; that he “continued to physically prevent” Cleary “from stopping and questioning” him; and that “in a quick aggressive manner with his right hand reached towards the area of his waistband where” Cleary “had previously observed a distinct bulge.” Cleary asserted that “in fear for officer safety,” he “struck” Respondent “in the head in an effort to keep” Respondent “from reaching for any possible weapons from his waistband.” Cleary then “took” Respondent “to the ground and placed him in handcuffs.”

It is hardly surprising that Cleary’s testimony at the criminal trial essentially mirrored the version of this event that he delineated in the YPD Crime Investigation Report because by the time the criminal trial took place Respondent had already filed a notice of claim regarding his civil action against YPD based on Cleary’s actions; and because Cleary knew that if his testimony at the criminal trial deviated from the version of this event he had delineated in the YPD Crime Investigation Report he potentially faced internal YPD disciplinary action.



Since Cleary had a motive to invent, or at least embellish, all of the claims he made in his YPD Crime Investigation Report regarding what Respondent said and did during his incident, I find that I cannot credit anything that Cleary has written or testified to regarding this incident.

As to Singer, since he did not appear to testify at this trial, Respondent's counsel did not have the opportunity to cross-examine him about why he did not join Cleary in signing the YPD Crime Investigation Report that Cleary prepared (DX 2). The limited nature of Singer's testimony at the criminal trial raises the suspicion that he may have refused to sign the YPD Crime Investigation Report because he knew that Cleary had invented or embellished the facts he detailed in the YPD Crime Investigation Report.

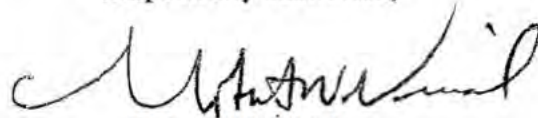
Although in his trial testimony Singer supported his partner's claims about Respondent's verbal responses, I find it significant that Singer did not corroborate his partner's claims that Respondent became physical and aggressive towards Cleary; or that he had pushed Cleary's hand back in an effort to leave the area; or that he had attempted to push past Cleary. Singer asserted that he did not see Respondent do these things because his back was turned towards Cleary and Respondent as he was busily attempting to make a radio transmission. I find that Singer's testimony raises the suspicion that he was willing to support his partner's embellished claims up to a point, but that he was not willing to corroborate his partner's claim that Respondent became physically aggressive towards Cleary. As a result, I cannot credit Singer's criminal trial testimony.

In conclusion, I find that Cleary's and Singer's hearsay statements regarding this incident do not constitute sufficiently credible evidence to enable the Department to meet its burden of proof.

The Advocate argued that Respondent should, nonetheless, be found Guilty of failing to comply with Cleary's and Singer's order to stop based on the hearsay statement of Campanile who transported Respondent to the hospital. In his report (DX 3), Campanile wrote that he overheard Respondent telling someone on the telephone, "I did not do anything wrong. I don't have to stop and answer any questions." This hearsay claim, made by a fellow officer who would be expected to support Cleary and Singer, does not sufficiently refute Respondent's testimony that although he had kept walking when he merely heard shouts of "Yo" behind him, when he turned around and saw a marked RMP, he did stop.

The Advocate also argued that Respondent's testimony that he told Cleary and Singer, "My name isn't 'Yo.' Is that how you address people?" and that he had asked them, "What are you talking about?" constituted rude, discourteous remarks. Since Respondent denied using any profanity when he made these remarks and since I cannot credit Cleary's and Singer's claims that he did use profanity in addressing them, I reject the Advocate's argument. Respondent is found Not Guilty.

Respectfully submitted,



Robert W. Vinal

Assistant Deputy Commissioner – Trials

**APPROVED**  
MAR 7 2016  
  
RAYMOND W. KELLY  
POLICE COMMISSIONER